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D & R Enterprises d/b/a Metro Enterprises and United Food & Commercial Workers Union, Local Union No. 1657 AFL-CIO & CLC. Case 15-CA-15745

July 31, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND
BRAME

Upon a charge filed by the Union on March 13, 2000, the General Counsel of the National Labor Relations Board issued a complaint on April 13, 2000, against D & R Enterprises d/b/a, Metro Enterprises, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On June 27, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On June 29, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 28, 2000, notified the Respondent that unless an answer were received by May 8, 2000, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, has been a corporation, with an office and place of business at Maxwell/Gunter United States Air Force Base in Montgomery, Alabama, where it engaged in the operation of barber shops. During the 12-month period preceding the

issuance of the complaint, in conducting its operations, the Respondent provided services valued in excess of \$50,000 within the State of Alabama for the Army and Air Force Exchange Services, an enterprise directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All barbers (excluding the base manager as well as guards and supervisors, as those are defined in the National Labor Relations Act) employed at the Company's barbershops at Maxwell/Gunter Air Force Base.

At all material times since or about March 1, 1996, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in collective-bargaining agreements, the most recent of which was effective from March 1, 1996 through March 1, 2001.¹ At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About September 1999, Respondent failed to continue in effect all the terms and conditions of the agreement described above, by failing and/or refusing: to pay contractually required sick and accident benefits; to pay contractually required eye and dental care benefits; to pay contractually required legal assistance benefits; to remit union dues deducted from bargaining unit employee wages; and to pay wages earned by unit employees for the period September 27, 1999 through October 8, 1999. Respondent engaged in the conduct described without the consent of the Union. The terms and conditions described are mandatory subjects for the purpose of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

¹ Although the complaint refers to a "recognition agreement", the other complaint allegations suggest that this agreement is a collective-bargaining agreement.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing since about September 1999, to continue in effect all the terms and conditions of the 1996–2001 collective-bargaining agreement described above by unilaterally failing and/or refusing to pay contractually required sick and accident benefits; to pay contractually required eye and dental care benefits; to pay contractually required legal assistance benefits; to remit union dues deducted from bargaining unit employee wages; to pay wages earned by bargaining unit employees for the period September 27, 1999 through October 8, 1999, we shall order the Respondent to comply with the terms and conditions of the 1996–2001 collective-bargaining agreement, to remit union dues deducted from bargaining unit employee wages, and to pay the above-listed benefits and wages, including any additional amounts applicable to such delinquent payments as determined pursuant to *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Respondent has violated Section 8(a)(1) and (5) by failing to maintain contractually required health and dental and legal assistance benefits for its unit employees, we shall order the Respondent to restore the health, dental and legal assistance benefits and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 632 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.²

ORDER

The National Labor Relations Board orders that the Respondent, D & R Enterprises d/b/a Metro Enterprises, Maxwell/Gunter United States Air Force Base in Montgomery, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally failing and/or refusing to continue in effect all the terms and conditions of the 1996–2001 collective-bargaining agreement with the Union by failing and refusing: to pay contractually required sick and acci-

dent benefits; to pay contractually required eye and dental care benefits; to pay contractually required legal assistance benefits; to remit union dues deducted from bargaining unit employee wages; to pay wages earned by bargaining unit employees for the period September 27, 1999 through October 8, 1999.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor and abide by the terms of the 1996–2001 collective-bargaining agreement described above by paying contractually required sick and accident benefits; paying contractually required eye and dental care benefits; paying contractually required legal assistance benefits; remitting union dues deducted from bargaining unit employee wages; paying wages earned by bargaining unit employees for the period September 27, 1999 through October 8, 1999.

(b) Make all unit employees and the Union whole, with interest as set forth in the remedy section of this decision, for any losses suffered as a result of the failure and refusal: to pay sick and accident benefits; to pay eye and dental care benefits; to pay legal assistance benefits; to remit union dues deducted from bargaining unit employee wages; and to pay wages earned but not paid for the period September 27, 1999 through October 8, 1999.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility at Maxwell/Gunter United States Air Force Base in Montgomery, Alabama, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice

² To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Employer's delinquent contributions during the period of delinquency, the Respondent will reimburse the employees, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

to all current employees and former employees employed by the Respondent at any time since September 1999.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 31, 2000

John C. Truesdale,	Chairman
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Sarah M. Fox,	Member
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J. Robert Brame III,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally fail and refuse to continue in effect all the terms and conditions of our 1996–2001 col-

lective-bargaining agreement with the Union by failing and/or refusing: to pay contractually required sick and accident benefits; to pay contractually required eye and dental care benefits; to pay contractually required legal assistance benefits; to remit union dues deducted from bargaining unit employee wages; to pay wages earned by bargaining unit employees for the period September 27, 1999 through October 8, 1999.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor and abide by the terms of our 1996–2001 collective-bargaining agreement by: paying contractually required sick and accident benefits; paying contractually required eye and dental care benefits; paying contractually required legal assistance benefits; remitting union dues deducted from bargaining unit employee wages; paying wages earned by bargaining unit employees for the period September 27, 1999 through October 8, 1999.

WE WILL make all unit employees and the Union whole, with interest, for any losses suffered as a result of our failure and/or refusal: to pay contractually required sick and accident benefits; to pay contractually required eye and dental care benefits; to pay contractually required legal assistance benefits; to remit union dues deducted from bargaining unit employee wages; to pay wages earned by bargaining unit employees for the period September 27, 1999 through October 8, 1999.

D&R ENTERPRISES D/B/A METRO ENTERPRISES